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In Case Number CV 06 05411 SBA (Ballard)\*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 | In Re WAL-MART STORES, INC.  
WAGE AND HOUR LITIGATION

Case Numbers: C 06 02069 SBA

## **CLASS ACTION**

**[Proposed] ORDER DENYING  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT AND/OR SUMMARY  
ADJUDICATION AS TO PLAINTIFFS  
BARRY SMITH, MICHAEL WIGGINS AND  
DANTON BALLARD**

14 This Document Relates To:

Date: April 22, 2008

Time: 1:00 p.m.

Location: United States Courthouse  
Courtroom 3, Third Floor  
1301 Clay Street  
Oakland, CA 94612-5212

## **ORDER**

This matter comes before the Court on Defendant's Motion for Summary Judgment and/or Summary Adjudication as to Plaintiffs Barry Smith, Michael Wiggins and Danton Ballard (Docket No. 267). The Court has considered the parties' filings [and statements made at oral argument on this Motion, which was held on April 22, 2008].

## BACKGROUND

7 Plaintiffs Smith, Wiggins, Ballard and Lyons are all former employees of Defendant, Wal-Mart  
8 in the State of California. On March 20, 2006, Plaintiffs, Barry Smith and Michael Wiggins filed their  
9 Complaint in this Court. Thereafter, on May 17, 2006, Plaintiffs, Danton Ballard and Nathan Lyons  
10 filed their similar action in the Superior Court of California, Los Angeles County. Defendant removed  
11 the Ballard/Lyons action to The District Court for the Central District of California. That matter was  
12 subsequently transferred and ultimately consolidated with the Smith/Wiggins action pending before  
13 this Court. On March 27, 2007, Plaintiffs filed their First Amended Consolidated Complaint.  
14 Defendant filed a Motion to Dismiss the Amended Consolidated Complaint and a Motion to Strike  
15 (Docket No. 80) which were denied in part and granted in part.

16 The First Amended Consolidated Complaint seeks to recover for defendant's alleged violation  
17 of California *Labor Code* §201 (failure to timely pay all earned wages upon termination), *Labor Code*  
18 §227.3 (failure to pay accrued vacation upon termination), and restitution pursuant to California  
19 *Business & Professions Code* §17200, based upon the *Labor Code Violations*.

20 Plaintiffs' Motion for Class Certification was granted in part and denied in part on February  
21 12, 2008. The Court certified the following class:

22 All former store employees of Wal-Mart (including Wal-Mart Stores, Wal-Mart  
23 Supercenters and Sam's Clubs) in the State of California whose employment ended  
24 during the period from March 20, 2002 through the date a judgment is rendered in this  
25 matter, and who are members of one or both of the following Subclasses:

Subclass No. 1: Class Members who, according to Wal-Mart's computerized records, have not been paid all accrued and unused vacation and personal time they earned

1 while employed by Defendant.

2 Subclass No. 2: Class Members who, according to Wal-Mart's computerized records,  
 3 have not been paid all wages, which include hourly pay, salary, and geographical  
 4 assistance pay, they earned while employed by Wal-Mart

#### 5 **LEGAL STANDARD**

6 Fed. R. Civ. P. 56(c) requires that a moving party demonstrate to the satisfaction of the court  
 7 "that there is no genuine issue of material fact and that the moving party is entitled to judgment as a  
 8 matter of law." As noted below, that standard requires that even the slightest doubt about the  
 9 sufficiency of the evidence should be resolved in favor of plaintiff.

10 The United States Supreme Court held, in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252,  
 11 106 S.Ct. 2505, (1986) that the Court must determine "whether reasonable jurors could find by a  
 12 preponderance of the evidence that the plaintiff is entitled to a verdict." Credibility determinations and  
 13 the weighing of the evidence as well as the drawing of legitimate inferences from the facts are  
 14 functions for the jury. *Id* at 255. The party opposing the motion need only present evidence "from  
 15 which a jury might return a verdict in his favor. If he does so, there is a genuine issue of fact that  
 16 requires a trial." *Id* at 256.

17 Because summary judgment is a "drastic device" cutting off a party's right to present  
 18 its case to a jury, the moving party bears a "heavy burden" of demonstrating the  
 19 absence of any triable issue of material fact. *Nationwide Life Ins. Co. v. Bankers  
 Leasing Ass'n, Inc.*, 182 F.3d 157, 160 (2d Cir.1999).

20 *Avalos v. Baca*, 2006 WL 2294878 (C.D.Cal. 2006), at \*1

#### 21 **ANALYSIS**

22 The Court finds and holds as follows:

23 (1) As demonstrated by the Declaration of Martin Shapiro, Ph.D., a genuine issue of  
 24 material fact exists as to whether Wiggins received all wages owed to him;

25 (2) As Wiggins was not paid all wages owed to him, a genuine issue of material fact  
 26 exists as to whether he is entitled to claim penalties. Although Wiggins may have returned to a  
 27 Wal-Mart and was ultimately paid wages a genuine issue of material fact exists as to whether he  
 28 was underpaid therefore entitling him to penalties under Labor Code §203. As a genuine issue of

1 material fact exists as whether Wiggins' §203 claim is governed by a one-year statute of  
 2 limitations;

3       (3)     As demonstrated by the Declaration of Dr. Shapiro, there is a genuine issue of  
 4 material fact as to whether Wiggins was paid all wages on termination. As such, a genuine issue of  
 5 material fact exists as to whether there was a failure to record wages accurately under §226 and  
 6 whether he suffered injury as a result of any information contained on his wage statements;

7       (4)     As demonstrated by the Declaration of Dr. Shapiro, a genuine issue of material fact  
 8 exists as to whether Wiggins received all wages owed to him. Consequently, there is genuine issue  
 9 of material fact as to whether Wal-Mart is liable on Wiggins' claim under *Business and*  
 10 *Professions Code §17200 et seq.*, based on alleged violations of §227.3;

11       (5)     As demonstrated by the Declaration of Dr. Shapiro, a genuine issue of material fact  
 12 exists as to whether Wiggins received all wages owed to him. As such, a genuine issue of material  
 13 fact exists as to whether Wiggins has standing under Article III of the United States Constitution;

14       (6)     As demonstrated by the Declaration of Dr. Shapiro, a genuine issue of material fact  
 15 exists as to whether Ballard received all wages owed to him;

16       (7)     A genuine issue of material fact exists as to whether Wal-Mart is liable on Ballard's  
 17 claim for waiting time penalties for late payment of wages upon termination under §203, as a  
 18 genuine issue of material fact exists as to whether Ballard was paid all wages he was owed on the  
 19 same day his employment terminated in March 2006;

20       (8)     As demonstrated by the Declaration of Dr. Shapiro, there is a genuine issue of  
 21 material fact as to whether Ballard was paid all wages on termination. As such, a genuine issue of  
 22 material fact exists as to whether there was a failure to record wages accurately under §226 and  
 23 whether he suffered injury as a result of any information contained on his wage statements;

24       (9)     As demonstrated by the Declaration of Dr. Shapiro, a genuine issue of material fact  
 25 exists as to whether Ballard received all wages owed to him. Consequently, there is a genuine  
 26 issue of material fact as to whether Wal-Mart is liable on Ballard's claim under *Business and*  
 27 *Professions Code §17200 et seq.*, based on alleged violations of §227.3;

(10) As demonstrated by the Declaration of Dr. Shapiro, a genuine issue of material fact exists as to whether Ballard received all wages owed to him. As such, a genuine issue of material fact exists as to whether Ballard has standing under Article III of the United States Constitution;

(11) As demonstrated by the Declaration of Dr. Shapiro, a genuine issue of material fact exists as to whether Smith was paid all wages owed to him, and, as such, a genuine issue of material fact exists as to whether he is entitled to claim penalties. Although Smith returned to a Wal-Mart store and was ultimately paid wages there is a genuine issue of material fact as to whether he was underpaid therefore entitling him to penalties under Labor Code §203. Also, a genuine issue of material fact exists as whether Smith's §203 claim is governed by a one-year statute of limitations;

11 (12) As demonstrated by the Declaration of Dr. Shapiro, there is a genuine issue of  
12 material fact as to whether Smith was paid all wages on termination. As such, a genuine issue of  
13 material fact exists as to whether there was a failure to record wages accurately under §226 and  
14 whether he suffered injury as a result of any information contained on his wage statements; and

15 (13) As demonstrated by the Declaration of Dr. Shapiro, a genuine issue of material fact  
16 exists as to whether Smith received all wages owed to him. As such, a genuine issue of material  
17 fact exists as to whether Smith has standing under Article III of the United States Constitution.

## CONCLUSION

19 Accordingly, Defendant's Motion for Summary Judgment and/or Summary Adjudication as  
20 to Plaintiffs Barry Smith, Michael Wiggins and Danton Ballard DENIED. Additionally, Plaintiff  
21 Barry Smith is reinstated as a class representative for subclasses 1 and 2 consistent with damages  
22 that he has suffered as identified in Wal-Mart's databases and declared to by Dr. Shapiro.

23 || IT IS SO ORDERED

25 | Dated:

**Saundra Brown Armstrong  
United States District Judge**